

**Water Quality Standards Advisory Committee  
Meeting Minutes  
September 14, 2004**

**Members Present:**

William Beckwith	US Environmental Protection Agency
Wendell Berry	NH Lakes Association
Phil Bilodeau	NH Water Works Association
Vernon Lang	US Fish and Wildlife Service
Eileen Miller	NH Association of Conservation Districts
Carl Paulsen	NH Rivers Council
Marjory Swope	NH Association of Conservation Commission

**Members Absent:**

Steve Clifton	Consulting Engineers of NH
Michael Donahue	Business and Industry Association of NH
John Dreisig	NH Public Health – Risk Assessment
Robert Fawcett	NH Fish & Game
Tim Fortier	NH Travel Council
Ben Frost	NH Office of State Planning
Nancy Girard	Conservation Law Foundation
Donna Hanscom	NH Water Pollution Control Association
John Hodsdon	NH Farm Bureau
Ken Kimball	Appalachian Mountain Club
Bill McDowell	University of New Hampshire
Peter Rice	NH Municipal Association
Jason Stock	NH Timberland Owners Association

**Others Present:**

Rob Lauricella	City of Claremont
Rodney Bartlett	Town of Salem
William Daly	Town of Salem
Brian Gallagher	UNH Water Supply
Chip Chesley	City of Concord
Michael S. Giaimo	BIA of NH
Jim Donison	City of Concord
Eric Klerk	City of Claremont
Ryan Lynch	Aquarion Water Company of NH
Allan Palmer	PSNH
Andrew Serell	Rath, Young & Pignatelli
Doug Starr	Jaffrey
Tom Willis	City of Rochester
Mary Beth Wiser	City of Rochester
Anthony Zuena	SEA Consultants, Inc.

**DES Staff Present:**

Paul Currier	Administrator, Watershed Management Bureau
Bob Estabrook	Watershed Management Bureau
Gregg Comstock	NHDES
George Berlandi	NHDES
Marie LosKamp	Executive Secretary, Watershed Management Bureau

**I. Introductions and Acceptance of July 13, 2004 Draft Minutes**

- **Marjory Swope, Chairperson, opened the meeting at 1:40 pm. The first order of business was the discussion and acceptance of the minutes from the last meeting. Are there any corrections, additions or deletions?**

- Vern Lang – correction on page 17 near the bottom, 7 csf – increase *solution* change to increase *dilution* at the very end of the first line.
- Marjory – Any other corrections? If no other corrections may I have a motion to approve.
- Wendall Berry made a motion to approve the minutes of July 13, 2004, Carl seconded the motion and all voted in favor to accept minutes as amended.
- Marjory - Minutes of Meeting adopted as amended.

*Please see attached PowerPoint Presentation for Paul Currier's presentation at this meeting.*

## II. Update Status of Proposed Rules – Paul Currier

The proposed rule language is essentially final. There is room for additional discussion regarding the definition of cultural eutrophication and William Schroeder has put forth a suggestion that is further down on the agenda.

### A. **Proposed Water Transfers**

We are final

### B. **Existing Water Transfers**

Feel we are final

### C. **Time Dependent Permits**

Feel we are final

### D. **As Naturally Occurs Language**

What you received this time we think are the real numbers with equal data representation from each of the lakes in the analysis. I would be glad to take comments. Please email your comments to us. We feel this is final as well. We propose to put rule making language on hold as final subject to further discussion on cultural eutrophication and work on the antidegradation review process because the two are connected. Are there any questions on that? Any question on rule language as talked about last time? The latest proposed language was distributed last time and it is still the same as last time. We won't be making any more changes. Paul had a meeting with water suppliers on NPDES permits. Transfers from one water body to another water body require an NPDES permit. This was decided by the federal court which have said that water transfers need NPDES permits. Our existing rules cannot do transfers. No grandfathering for water quality standards. Relative to existing water transfers I just had a meeting with some of the water suppliers, which I thought was pretty productive. In a nut shell for existing transfers, NPDES permits are required - something that EPA decided or that we decided - two court decisions have decided that transfers of water from one waterbody to another require NPDES permits.

## **Any questions or comments?**

**William Beckwith** – On the antidegradation issue, depending on how existing activity is reviewed with regard to their existing legality, whether or not they should be reviewed under Tier 2 for high quality water protection presuming what we said was accurate for Tier 2 still in all cases Tier 1 protection would apply even if there was a new or increased activity. The second question is procedurally, you talk about being close to final with language and I as a representative from EPA in listening and in guiding discussions, not trying necessary to dictate it, and do you have a time line for actually submitting a draft proposed revisions to EPA? It would be preferable to let the legal staff know to review this as well who have not been following the process.

**Paul** - I would say the time is now. If you want to wait until we start the official rule making process to advise your staff, the time may be too short. Once we start the process we have to complete it in 6 months or we have to start all over again. We should work out the language with EPA before we start the clock.

**Bill** - If you can start with EPA now that would help with the time line.

**Paul** - Proposal to public in formal rule making procedures.

### **Language on cultural eutrophication.**

**Marjory** – July version had some alternates and we did some crossing out. Paul was to send out a cleaned up version of final language.

**Paul** - Thanked the City of Concord for getting together the public water supplies and Bud Berry for going back to Lake Associations and arranging for a meeting between lake association and DES. The purpose of this advisory committee is to spark that kind of dialog. For everyone that is on the committee we hope you are actively representing your constituency and if there is a particular issue that we should engage in discussions with that constituency, please initiate that activity to make it happen. That is what the committee is for, and we find that very productive.

### **Marjory – Any comments or questions?**

**George Berlandi to Bill Beckwith** - Will EPA be looking at the whole set of standards to approve or disapprove or will they be looking at the sections that we propose changes to?

**Bill Beckwith** – Well we certainly will be looking at what you propose as any new or revised standards and you might get and to the extent that we act in the form of an approval or disapproval and actually adopt those. As you know from the last time around, trying to review temperature criteria is an outstanding issue, there might have been another item or two you might hear from us or comment that those are also the things that you should look at now or perhaps at another time. I have been asking NPDES permit people how rigorous they felt we should get into that temperature criteria issue, we don't know what to do. We don't have temperature criteria, and I am still getting mixed feedback.

**Marjory** – Any other comments regarding the proposed rule? Okay on to antidegradation.

➤ **Paul** - We will put it together in a format the joint legislature would like to see and put it out to members.

## **III. Antidegradation – Paul (PowerPoint presentation)**

### **A. Overview**

I apologize for not getting the read ahead materials out to everyone, i.e. the discussion of antidegradation and the proposed future tasks for the advisory committee. We have copies of one that was partially done and the hard copy is a more complete version. I will cover the same ground in my power point presentation. If you have questions, stop me as I go. Proposed issues for discussion are all items that stem from the Clean Water Act. We have designated uses and then we have criteria that go with the uses to make the standards. For example, if the dissolved oxygen is less than 5mg per liter then the aquatic life designated use is not supported. The third leg is the antidegradation policy under federal guidelines, consistent with EPA. If a state does not create Water Quality Standards, then the EPA can create them for the states. Water Quality Standards apply to water column, sediments and the riparian zone and include wildlife. The standards reside in two places: in the Statutes RSA 485-A:8 and in rules Env-Ws 1700. If you look at the 5 designated uses in NH, the starred ones have to be included which include aquatic life and primary contact recreation.

There are two maps on the wall, one to the right of the projector and one to the left. One is all the waterbodies in NH that are Class A.

Water Quality Assessment - whether a waterbody meets standards or not. Every waterbody is supposed to be done within every 2 years, we do what we can; next one is due the first of April in 2006. As of 2002, we combined the 305(b) Water Quality Report with the 303(d) list of impaired waterbodies. We now do both in one report and it is on the web. We have a waterbody catalog under development, doesn't include wetlands at all. We have a CALM listing methodology and assigned assessment units for all waterbodies in a catalog. For each waterbody or assessment unit – the CALM describes the minimum amount of data and translates it into an assessment. We do it every 2 years and whenever an is needed for decision-making. There are 6 waterbody types, and for headwaters there can be multiple small streams in one assessment unit.

401 Water Quality Certification – Certify for every federal application for an activity that creates a discharge, i.e. wetlands, FERC, NPDES, NPDES Small MS4 Phase II Stormwater General Permit and NPDES Construction General Permit, that construction and operation of the project will comply with our water quality standards. This requires DES to make a prediction of future water quality during construction and operation of the project. Operation, if it is a development is post construction of the project, septic maintenance, etc.

#### **Marjory – Any comments or questions?**

**Vern** – Paul, tier 1 pertains to existing uses, and you were just talking about designated uses. Have you made a comparison, made a differentiation between what is an existing use versus a designated use?

**Paul** – No, I think that the universal designated uses include the existing uses that are considered when we are talking about water quality standards. If you don't think that is true we can have further discussion on it.

**Bill Beckwith** – I think it is true and if it is true then that is something that requires a determination. For example under aquatic life the most pristine community, or every individual species that would potentially occur in New Hampshire waters, wouldn't necessarily have to occur in a particular water body to meet its aquatic life, Class B aquatic life uses. But if the water was better than Class B that would be protected as a use or it could be at any minimum interpretation which a lot does fall in our state. Where an aquatic community stood with regard "to met the designated use" Tier 2 isn't about uses.

**Paul** – We would put that into tier 2. The consideration of special aquatic communities and their endangered species and anything else like that, we would put in tier 2.

**Bill** - You can't allow lowering of an existing use, but you can allow a lowering of water quality that is better than necessary to meet the uses. Again it could be a semantics issue. If you get the job done and you are calling it tier 2, then the job is done.

**Paul** – I guess I would ask you to take it back to EPA if there is a question about this and get it resolved now.

**Bill** – Yes, it is a question, because existing uses are not necessarily the same as designated uses. For example the Class B might not be synonymous with requiring that all endangered species be protected to aquatic community under class B but endangered species may be protected as an existing use in a group. Again I am saying, maybe because part of the issue here is the interpretation of what would actually constitute the minimum requirements to meet your Class B aquatic life uses which from a community standpoint is a little vague at times.

**Paul** – What we are proposing here is that if water quality standards were met and if the waterbody is not impaired, then existing uses, and tier 1 is satisfied, existing uses are met.

**Bill** – What I am saying that, as a generic statement, that is not consistent with federal antidegradation. It could be a true statement for any given water - upon review it could be a true

statement. But for all waters in New Hampshire, generically that assumption is 180 degrees opposed to the very concept of the existing uses versus designated use concept.

**Paul** – I think in order to understand that we are going to need....

**Bill** – If that was true there would be no need for an explicit section on designated uses, where existing versus designated uses. We have never had a discussion that I am aware of how NH actually characterizes what represents an existing use versus a designated. But just making that statement isn't adequate.

**Paul** – *We will make that statement in a letter and let EPA lawyers take a look at it.*

**Bill** – Well that is exactly the kind of thing that went on in North Conway - the issue over proposed direct discharge in the absence of sources where on one hand the people said, if we put the discharge in upstream of the established, existing beach/bathing grounds, technically your standards say you meet the bacteria criteria you can still swim. Recreation free of the concerns with point source discharge of sewage that is not necessary to meet your designated uses.

**Paul** – Aquatic existing use is the existing use would be primary contact recreation and you have criteria that support primary contact recreation and the requirement of tier 1 is to meet that criteria and maintain the swimming use. That is the interpretation that we are proposing.

**Carl** – Bill are you saying the state did interpret it as an existing use.

**Bill** – At that time, that is what the state said yes this is a different situation.

**Paul** – Did we do an antidegradation review on that?

**Bill** – Yes we had a hearing on it.

**George** – The idea is we did look at the existing use. We identified it as primary recreation. Looking at it we were concerned that the existing uses were protected and then we looked at the high quality water which is tier 2. In other words we bounced it into, we felt that area was very high quality and we wanted to maintain it as high quality. That is how we got into it.

**Bill** – Well you may be right, but that is also true at the time and again I think there is room for the state to make calls on this. But at the time you were saying this existing use in the presence of this high quality water for recreation being able to swim without wondering what is happening upstream at a treatment plant, i.e. this current scene here in the mountain versus swimming in the Merrimack downstream from a treatment plant is different, and that in fact should be preserved.

**Carl** – Is there a definition at the state or federal level for existing or designated uses?

**Paul** - Yes

**Bill** – No, see that is the problem.

**Paul** – There is explanation to the water quality standard catalog.

**Bill** – Yes, there is some discussion but we have the statement existing uses cannot be removed and are to be maintained and protected, but any further definition of exactly what constitutes an existing use is not listed in any great iteration in the statute and that becomes an issue.

**Paul** – What we are saying is that the universe of designation uses includes all the possibilities for existing uses. So when we have standards that protect the designated uses, they are also protecting the possible existing uses. *And as Bill was saying that is not necessarily so, so we will put together a discussion paper which we propose to interpret it that way and we will abide by the decision of the EPA. EPA can give us feedback on it.*

**Paul** - *401 water quality certification rules - we will bring a draft to next meeting. They were adopted as interim rules because the rules expired, we would like to delve into tier 2 and guidance on how we should apply and talk about how we might go through a review, then tackle tier 3 or maybe tier 1 after our discussions with EPA and Bill Beckwith. Words cloned from federal words.*

**Bill** has a proposal to do some estimation of cultural eutrophication and do some trial calculations that estimates nutrient and see if this idea would work.

**IV. Discussion for the Next Meeting**  
**A. Cultural Eutrophication**

**V. Other Business**  
**A. Next Meeting Date?**  
**Tuesday, October 26<sup>th</sup> at 1:30 pm,**

- **Marjory – Do I have a motion to adjourn? Vern moved to adjourn and Carl seconded the motion. All voted in favor;**

**Meeting Adjourned**

Adjourned at 3:30 pm